NO. 84-

Office-Supreme Court, U.S.
FILED
JAN 24 1985
ALEXANDER L. STEVAS,
CLERK

84-1095

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HENRY B. FITZPATRICK, JR.,

Petitioner,

vs.

I.V. DiMARTINO, A.J.S.C., etc., and
THE SUPERIOR COURT, LAW DIVISION, etc.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Counter-Statement of the Case

With the adoption of the 1947 State Constitution, the existing decentralized regulation of the legal profession in New Jersey was revamped to establish the Supreme

Court of New Jersey, the State's highest appellate Court, as the exclusive regulator of the practice of law in the State.* Thus, Article VI, §II par. 3 of the New Jersey Constitution provides that the Supreme Court of New Jersey,

> "shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts . . . [and] shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."

As consistently interpreted by the Supreme Court of New Jersey, this constitutional provision empowers the Court to establish and supervise the obligations and conditions as to the practice of law from admission to disbarment and in "every area in which unjust or unethical conduct might afflict the public at the hands of those admitted by the Court to the practice of law." *American Trial Lawyers* v. *New Jersey Supreme Court,* 66 N.J. 258, 264, 300 A.2d 350, 353 (1974). See also *In the Matter of the Application of Philip J. LiVolsi,* 85 N.J. 576, 428 A.2d 1268 (1981), *State* v. *Rush, supra* at 410, 217 A.2d at 447.

In the exercise of its constitutionally delegated powers, the Supreme Court of New Jersey establishes the conditions for the plenary licensure of attorneys in the State. Prior to 1969, the rules promulgated by the Supreme Court of New Jersey precluded admission to the State bar of non-domiciliaries. Effective in 1969, however, the rule was amended to allow for the admission of attorneys

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* Prior to 1947, control over the admission of attorneys to the practice was fragmented with the former Supreme Court recommending and the Governor approving the licensing and admission of attorneys to practice in the State. *State* v. *Rush,* 46 N.J. 399, 411-412, 217 A.2d 441, 447 (1966).

residing out of state who maintained a principal law office in New Jersey. This provision was retained in a subsequent modification of the rule in 1978, requiring domiciliaries, as a condition of licensure, to henceforth establish a bona fide office in the State. See N.J. Ct. R. 1:21-1(a). Effective August, 1982, the rule was again amended in conformance with the Court's decision in *In re Sackman,* 90 N.J. 521, 448 A.2d 1014 (1982) to eliminate the principal-office requirement for non-domiciliary New Jersey licensed lawyers and to require for both domiliciary and non-domiciliary attorneys that they maintain a bona fide office in the State. Accordingly, a non-domiciliary attorney, who has satisfied all other requirements for licensure is permitted to practice in the State provided that he maintains a bona fide office in the State (as defined by the Court Rule) and appoints the Clerk of the Supreme Court as his agent for service of process. See N.J. Ct. R. 1:21-1(a).

The Court has also prescribed the conditions under which attorneys, who have not satisfied the aforestated requirements, might seek *pro hac vice* admission in the state courts. Effective in 1948, the Court adopted rules permiting unlicensed attorneys "of good standing" to be admitted "at the discretion of the Court in which any cause is pending, *pro hac vice,* . . . provided . . . that all pleadings, briefs and other papers filed with the Court shall be signed by an attorney of record authorized to practice in this State, who shall be responsible for them." See former N.J. Ct. R. 1:8-10(b) (1948) and former N.J. Ct. R. 1:12-2 (1953). The rule was amended in 1969 to permit *pro hac vice* appearances by employees of out-of-state professional corporations authorized to practice law in their own states and to make clear that the New Jersey attorney of record would be held accountable for the conduct of the lawyer appearing *pro hac vice.* See N.J. Ct. R. 1:21-2 (1969).

The rule was further amended in April 1975 to acknowledge that attorneys admitted to practice in New Jersey but no longer authorized to practice by reason of non-residence and the failure to maintain principle offices for the practice of law could seek admission *pro hac vice* under the same terms as other attorneys. Consistent with the 1978 amendment of N.J. Ct. R. 1:21-1(a), N.J. Ct. R. 1:21-2(a) was further amended effective January 10, 1979 to permit *pro hac vice* admission of resident attorneys who failed to maintain a bona fide office in the State. Most recently in September 1983 and February 1984, the rule has been amended by the Court to allow for resident or non-resident attorneys alike, who do not maintain a bona fide office for the practice of law within the State, as defined by N.J. Ct. R. 1:21-1(a), to seek permission to appear in a pending State Court matter "at the discretion of the Court" in which such matter is pending. In applying for *pro hac vice* admission those attorneys, whether domiciliaries or non-domiciliaries, must establish, *inter alia,* by affidavit or certification that good cause* exists for the granting of the motion.

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* The rule contemplates that good cause may be shown, by any of the following:

> "(i) the cause in which he seeks admission involves a complex field of law in which he is a specialist, or
>
> (ii) there has been an attorney-client relationshp with the client for an extended period of time, or
>
> (iii) there is a lack of local counsel with adequate expertise in the field involved, or
>
> (iv) the cause presents questions of law involving the law of the foreign jurisdiction in which the applicant is licensed, or

(Footnote continued on following page)

By the instant petition for certiorari, Henry B. Fitzpatrick, Jr., an attorney licensed by the State of Pennsylvania, but not authorized to practice law in the State of New Jersey, seeks review of the Order of the United States Court of Appeals for the Third Circuit, affirming the District Court's dismissal of Fitzpatrick's complaint filed pursuant to 42 U.S.C. §1983 against the Honorable I.V. DiMartino, Assignment Judge of the Superior Court of New Jersey, in response to Judge DiMartino's denial of Fitzpatrick's motion for *pro hac vice* admission in a State medical malpractice action (*Coleman* v. *Gorin*, Docket No. L-441 36-81). As detailed in the petition for certiorari, Fitzpatrick sought *pro hac vice* admission in this matter on the basis of his efforts in obtaining medical treatment for the plaintiff Coleman's injuries, which were the subject of the malpractice action (App. at 11a, 12a, 21a). Following a hearing on the motion, Judge DiMartino on May 21, 1982, rendered an oral opinion in which he concluded that Fitzpatrick had failed to establish any good cause for appointment of out-of-state counsel by reason of: 1) the complexity of the case for which he sought permission to join as counsel (App. at 13a); 2) the fact of a "long-held attorney-client relationship" (App. at 14a); 3) a lack of local counsel with expertise in the field involved (App. at 14a); or 4) the need for extensive dis-

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(v) there is need for extensive discovery or other proceedings in the foreign jurisdiction in which the applicant is licensed, or

(vi) such other reason as would present good cause for the pro hac vice admission."

[N.J. Ct. R. 1:21-2(a)(4)(i)-(vi)].

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covery in a jurisdiction at a great distance from New Jersey (App. at 14a).*

On June 22, 1983, Coleman moved pursuant to N.J. Ct. R. 2:2-4 for leave to appeal the April 21, 1982 decision of Judge DiMartino, which had been memorialized in an order dated June 7, 1982. In his brief Coleman urged *inter alia,* that the Court had abrogated "[t]he procedural due process rights of plaintiff [Coleman] and Henry B. Fitzpatrick, Jr. . . . by fail[ing] to reasonably or meaningfully apply the standards for *pro hac vice* admission" and had violated Fitzpatrick's rights under the Privilege and Immunities Clause of the United States Constitution. In an order dated July 12, 1982, the motion for leave to appeal was denied by the Appellate Division.** Thereafter,

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* As of the date of this motion, R. 1:21-2 provided in pertinent part that "[a]n attorney of any other jurisdiction of good standing there, . . . *may, at the discretion of the Court* in which any matter is pending, be permitted, *pro hac vice,* to speak in such matter in the same manner as an attorney of this State who is domiciled in and maintains a bona fide office for the practice of law in this State or maintains in this State his principal office for the practice of law; . . . provided, however, that all pleadings, briefs and other papers filed with the Court shall be signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of the cause and of the admitted therein." (emphasis supplied).

The factors upon which Judge DiMartino based his determination were initially suggested in the *Burlington County Internal Medicine Association, PA.* v. *Amer. Medicorp,* 168 N.J. Super. 382, 403 A.2d 43 (Chan. Div. 1979) decision and later incorporated into the current Supreme Court Rule.

**N.J. Ct. R. 2:2-4 provides in pertinent part that ". . . The Appellate Division may grant leave to appeal from an interlocutory rule of a court, *in the interest of justice . . .*" (emphasis added). Compare N.J. Ct. R. 2:2-3(a)(1) (appeal as of right from final judgments of the Superior Court trial divisions).

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on or about July 28, 1982, Coleman filed with the Supreme Court of New Jersey a Notice of Motion for Leave to Appeal the Interlocutory Order of the Appellate Division (Da55 to Da60), in support of which Coleman filed a brief raising the identical federal constitutional issues raised before the Appellate Division. By order dated October 26, 1982, the motion was denied by the Supreme Court.* No further review of this decision was sought from this Court.

On June 3, 1983, Fitzpatrick filed a Complaint in the United States District Court for the District of New Jersey seeking a judgment declaring "[Judge Di Martino's] refusal to permit his admission *pro hac vice* in the absence of a specific finding that he is unfit or that substantial reasons exist which would justify his exclusion constitutes [sic] a violation of his rights under Article IV §2 of the United States Constitution and under the Fourteenth Amendment to the United States Constitution" and preliminary and permanent injunctive relief "enjoining the defendants from preventing his admission *pro hac vice* . . ." (App. at 24a). A timely answer was filed on August 18, 1983, asserting among the affirmative defenses the failure to state a cause of action and the court's lack of jurisdiction pursuant to 28 U.S.C. §1257 to collaterally review the decisions of the New Jersey State courts with regard to plaintiff's motion for *pro hac vice* admission.

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* N.J. Ct. R. 2:2-3(b) provides that "[a]ppeals may be taken to the Supreme Court by its leave from interlocutory orders:

* * *

(b) of the Appellate Division when necessary to prevent irreparable injury;

* * *

Defendants subsequently moved for an order granting summary judgment or in the alternative for dismissal of the complaint pursuant to Fed. R. Civ. Proc. 12(b)(1) or (6) based upon their primary contention that plaintiff's claims were foreclosed by this Court's ruling in *Leis* v. *Flynt,* 439 U.S. 438 (1979). As well defendants urged dismissal on the basis that the federal court action constituted an impermissible collateral challenge to a final State court decision thus depriving the Court of subject matter jurisdiction pursuant to 28 U.S.C. §1257 (c) and was otherwise barred by the doctrine of *res judicata.* In response thereto, plaintiff's counsel advised the Court, by letter dated December 12, 1983, that in view of *Leis* v. *Flynt,* she "believed that defendants' Motion should be granted . . ." and . . . did not intend to file a brief in opposition thereto." (App. at 5a). By order dated January 26, 1984, the Honorable John W. Bissell, U.S.D.C.J., granted defendants' motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6) (App. at 7a).

A Notice of Appeal to the United States Court of Appeals for the Third Circuit was filed on February 18, 1984. In his brief filed with the Court, Fitzpatrick conceded that the *Leis* opinion was "determinative" of all of the constitutional issues presented by his complaint and thus mandated affirmance of the District Court order. (Brief and Appendix for Appellant, United States Court of Appeals for the Third Circuit at p. 7). By Order dated September 21, 1984, the United States Court of Appeals for the Third Circuit affirmed the District Court judgement (App. at 1a).

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Summary of Argument

The writ sought here should be denied because, as petitioner conceded below, the *Leis* v. *Flynt*, 439 U.S. 438 (1979) opinion is determinative of the constitutional claims asserted herein. Furthermore, no subsequent rulings by the Court alter the conclusion that the imposition of a good cause showing for *pro hac vice* admission of attorneys, not authorized to practice in the State courts, does not violate either the Privileges and Immunities or the Equal Protection clauses of the United States Constitution. Finally, a substantial question exists as to whether the Federal District Court below erred in assuming jurisdiction over the complaint inasmuch as it seeks collateral review of a final State court judgment.

ARGUMENT

Petitioner's challenge to the State Court ruling denying his motion for *pro hac vice* admission as plaintiff's counsel in a medical malpractice action fails to state any viable claim under the Privileges and Immunities or Equal Protection Clauses and otherwise presents substantial jurisdictional deficiencies so as to mitigate against plenary review of the Petition.

In his zeal to cast this petition in terms of a privileges and immunities violation and thereby to entice the Court to consider this matter in conjunction with *Piper* v. *Supreme Court of New Hampshire*, 723 F.2d 110 (1st Cir. 1983) prob. juris. noted —— U.S. —— (April 23, 1984), petitioner ignores a fundamental element of a cause of action under that constitutional provision. As a careful reading of this Court's opinions makes clear, Article IV §2 of the United States Constitution is implicated solely

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where a State or political subdivision thereof legislatively establishes classifications which condition the exercise or granting of a privilege upon State or other residency grounds. *United Building and Construction Trades* v. *Mayor,* —— U.S. —— (1984). As noted in *Toomer* v. *Witsell,* 334 U.S. 385, 395 (1948), "[t]he primary purpose of the clause . . . was . . . to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." Manifestly, and notwithstanding petitioner's arguments to the contrary, the distinctions drawn in N.J. Ct. R. 1:21-2(a) are based not upon State residency, but satisfaction of the requirements of N.J. Ct. R. 1:21-1(a), regarding authorization for practicing law in the State of New Jersey. See *Piper* v. *Supreme Court of New Hampshire, supra,* 723 F.2d at 115 n.5. Thus, an attorney, whether a domiciliary of New Jersey or another State, who does not hold a plenary license to practice in the State and/or who does not maintain a bona fide office for the practice of law in New Jersey, must, as a condition for appearance in the New Jersey courts, establish good cause for admission *pro hac vice* pursuant to N.J. Ct. R. 1:21-2(a). Petitioner's suggestion that invidious discrimination against out-of-state attorneys has been effected by application of the *pro hac vice* rule is thus utterly frivolous.* Similarly, given the absence

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* *United Building and Construction Trades* v. *Mayor, supra,* is not to the contrary. In that matter this Court concluded that a cause of action under the Privileges and Immunities Clause was stated where a challenged ordinance discriminated in favor of *some* State residents, (residents of the City of Camden) notwithstanding the fact that other State residents and non-residents were equally disfavored. In contrast, the applicability of R. 1:21-2(a) rests not upon any consideration of State or municipal residence but

(Footnote continued on following page)

of any demonstration by petitioners of any distinction made as between resident and non-resident attorneys in this context, petitioner's remaining equal protection challenge to the State court action herein similarly must fail. Compare *Zobel* v. *Williams*, 457 U.S. 55 (1982).* Review of the decisions below is plainly unwarranted.

Denial of the petition for certiorari is compelled as well by the significant issue, not addressed by the courts below, of whether the federal district court, consistent with this Court's ruling in *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983), could properly exercise jurisdiction over the complaint. As the complaint and

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authorization to practice in the State courts. As well, out-of-state residents, unlike those in the Camden case, do have the ability to seek modification of the Supreme Court of New Jersey's rules by the filing of a petition for review of the constitutionality or continued desireability of a rule. *Ethics Advisory Comm. Op. 475*, 89 N.J. 74, 80-81, 432 A.2d 59 (1981) app. dis. *sub nom Jacoby & Meyers* v. *Supreme Court of New Jersey*, 459 U.S. 962 (1982). See also *In re Sackman*, 90 N.J. 521, 448 A.2d 1014 (1982). They need not therefore be "restricted to the uncertain remedies afforded by diplomatic processes and official retaliation." *Toomer* v. *Witsell*, 334 U.S. 385, 395 (1948).

* The due process claim asserted in petitioner's Federal District Court Complaint is not presented in this petition. It should be noted however that as in *Leis* v. *Flynt*, 439 U.S. 438 (1979), the *pro hac vice* court rule at issue herein does not create any protectable property interest which would mandate satisfaction of due process requirements upon denial of the motion. Nevertheless, it is clear that unlike the procedural history presented in *Leis* v. *Flynt, supra*, petitioner was afforded "as much due process" as the Fourteenth Amendment would require: notice, an opporunity to be heard and an explication of the basis for denial of the claim. See *Board of Curators, Univ. of Mo.* v. *Horowitz*, 435 U.S. 78 (1978). See also App. at 8a to 15a.

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the question presented for review by this petition makes evident, petitioner's challenge herein is to a State trial judge's action (unaltered on appeal to the highest State court) in denying his motion for *pro hac vice* admission. Yet as the *Feldman* opinion reaffirmed, the federal trial courts lack subject matter jurisdiction to review final State court rulings pursuant to 28 U.S.C. § 1257(c). See also *Atlantic Line R. Co.* v. *Engineers,* 398 U.S. 281, 296 (1970). While petitioner's attempt in the first instance to seek review of the State trial court's action based upon the identical constitutional claims asserted herein was through the filing of interlocutory appeals to the Superior Court of New Jersey, Appellate Division, and thereafter to the highest State Court, the Supreme Court of New Jersey, this Court is not bound by petitioner's actions. Rather the Court could appropriately view the underlying decision and the denial of review by the appellate courts as final for purposes of 28 U.S.C. § 1257 in that a final ruling on a clearly severable and distinct matter was entered by the State courts. See *Cox Broadcasting Corp.* v. *Cohn,* 429 U.S. 469, 479 (1975); *Coopers & Lybrand* v. *Livesay,* 437 U.S. 463, 468 (1978), *Ray* v. *Robinson,* 640 F.2d 474 (3rd Cir. 1981). *Cf* also *Adams* v. *Adams,* 53 N.J. Super. 424, 147 A.2d 568 (App. Div. 1959). Thus petitioner may have unwittingly mischaracterized his State appeal as one lying from an interlocutory order and accordingly lost his right to seek timely review by this Court of the state court ruling. That result, however, would neither compel nor justify the District Court asserting jurisdiction in the instant matter to review the State court rulings. See *Dist. of Col. Ct. of Appeals* v. *Feldman, supra* at 482-484 n.16; *Dickinson* v. *Petroleum Conversion Corp.,* 338 U.S. 507 (1950).

Even assuming, however, that the federal district court properly assumed jurisdiction of this matter and that petitioner in some unarticulated fashion has demonstrated

the discriminatory impact of R. 1:21-2(a) upon non-resident attorneys, there is no basis for this Court to consider in a plenary fashion the question addressed comprehensively in *Leis* v. *Flynt, supra,* namely, whether a State, consistent with federal constitutional principles, may preclude appearances in the State courts by attorneys, not authorized to practice therein, based upon the absence of any demonstration of necessity for participation in a particular case by that counsel. As this Court has repeatedly recognized, the States have an "extremely important interest" in the regulation and licensure of attorneys practicing in their courts. See *Middlesex Ethics Comm.* v. *Garden State Bar Assoc.,* 457 U.S. 423, 434 (1982). Accordingly, this Court has emphasized that the right to practice law in the State courts is neither a privilege nor immunity of State or United States citizenship nor a right otherwise independently created by federal law. *Leis* v. *Flynt, supra* at 442 n.4, 443;* *Silverman* v. *Browning* 414 F. Supp. 80 (D. Conn), aff'd 429 U.S. 876 (1976); *Norfolk and Western R. Co.* v. *Beatty,* 400 F. Supp. 234 (S.D. Ill.) aff'd 423 U.S. 1009 (1975); *Brown* v. *Supreme Court of Virginia,* 359 F. Supp. 549 (E.D. Va) aff'd 414 U.S. 1034 (1973); *In re Lockwood,* 154 U.S. 116, 117 (1894); *Bradwell* v. *The State,* 16 Wall. 130, 139 (1872). Likewise, the fact of admission to the bar of one State does not establish any correspondening right to practice in a sister state. *Leis* v. *Flynt, supra* at 443. Rather, as has been repeatedly recognized by this Court, any right to practice the legal profession is a matter exclusively one of State law origin and control subject only

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* Although petitioner now asserts that *Leis* v. *Flynt* is of no relevance to this case, in papers filed with the Courts below he conceded that all of the issues raised by his complaint were governed by the *Leis* ruling. See p. 8, *supra.* Based upon this concession alone, review should be denied.

to the requirement that the State not exercise its power in an arbitrary or discriminatory manner or in a way contemplated to deny First Amendment freedoms. *Id.* at 442; *Konigsberg* v. *State Bar of California,* 353 U.S. 252, 273 (1957).

In this regard, this Court has upheld numerous restrictions imposed upon nonresidents seeking to practice laws in a sister state. Thus, in *Martin* v. *Davis,* 187 Kan. 473, 357 P.2d 782 (S. Ct. 1960) app. dis. *sub nom. Martin* v. *Walton,* 368 U.S. 25 (1961) this Court dismissed for want of a substantial federal question a challenge under the equal protection clause to a Kansas statute and rules of court requiring that an attorney admitted to the Kansas bar but who also was admitted and regularly engaged in the practice of law in another State only be allowed to practice before Kansas courts and administrative agencies if he had the association of a Kansas lawyer. In upholding the constitutionality of the requirement, this Court acknowledged the validity of five factors cited by the Kansas Supreme Court as underlying the restriction: 1) provision to Kansas citizens of the service of a resident attorney familiar with local rules and procedure and upon whom service could be made; 2) difficulties encountered by Kansas Courts and commissions in obtaining the presence of attorneys from Missouri; 3) inability of Kansas-officed attorneys to effectuate service on Missouri-officed Kansas attorneys; 4) refusal of some Missouri-officed Kansas attorneys to answer emergency calls; and 5) failure of Missouri officed Kansas attorneys to familiarize themselves with Kansas rules of procedure and practice. 368 U.S. at 27-28. Notwithstanding the fact that the appellant, a Missouri attorney practicing across the Kansas border, was a resident of and maintained a general practice in Kansas and was familiar with local Kansas rules and procedure, this Court concluded that the chal-

lenged Kansas requirement as explicated by the Kansas Supreme Court constituted permissible regulation of out-of-State attorneys. The fact therefore of possible "incidental individual inequality" as applied to Mr. Martin was in this Court's view insufficient to warrant invalidation. 368 U.S. at 26.

Likewise in *Norfolk and Western Railway Co.* v. *Beatty, supra,* the Court declined to invalidate on federal constitutional grounds* an Illinois statute which permitted out-of-state attorneys to appear in court proceedings in "isolated cases" on a discretionary case-by-case basis. The three-judge court reached this result notwithstanding the fact that

> . . . the cases [were] of federal origin, that the Plaintiffs' attorneys have been permitted to appear without limitation numerous times in the past, that the cases are presently being prepared for trial, that the Plaintiffs' attorneys are specialists regularly representing Plaintiffs in Madison County and elsewhere, that Plaintiffs in the state cases have freedom to select the forum of their choice, that the accidents involved occurred elsewhere, that Plaintiffs' attorneys have caused no disciplinary problems— [*Id.* at 237].

As the Court aptly noted:

> To view it otherwise would be for this Court to create a limited federal or national bar and to impose it on the states. To do so would be in total disregard of the state's great interests in the con-

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* The decision does not reveal what specific constitutional claims were asserted.

> trol and supervision of the practice of law in its own courts through reasonable requirements for licensing and admission. [*Ibid.*]

Consistent with these rulings, and for the reasons expressed in Point I of the Supreme Court of New Hampshire's brief submitted in *Supreme Court of New Hampshire* v. *Piper,* this Court should conclude that the practice of law does not fall within the purview of the Privileges and Immunities Clause. Yet even assuming that the Court decides to the contrary in *Piper* and further, invalidates the residency requirement therein, there is no need for this Court to address the wholly independent issue of a State's regulation in its courts of the practice of law by those out-of-state attorneys who have not sought admission to the bar. As this Court has repeatedly emphasized, the privileges and immunities clause "is not absolute," *Toomer and Witsell, supra* at 396, and this does not preclude discrimination against citizens of other states where there is a "substantial reason" for the difference in treatment. *Id.* at 398. Even assuming petitioner's establishment of any distinction in the treatment of non-resident attorneys in this context, the State undisputedly has a substantial interest in limiting the circumstances in which those attorneys, who have never demonstrated to the satisfaction of the State courts their competency to practice law, may appear in State proceedings.

CONCLUSION

It is respectfully submitted that for these reasons the petition for *certiorari* should be denied.

Dated: January 21, 1985

Respectfully submitted,

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